Office - Supreme Court, U.S.
FILED
NOV 18 1982
ALEXANDER L. STEVAS,
CLERK

NO. 82-691

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

CLIFFORD PERLMAN and STUART PERLMAN,
*Appellants,*

*v.*

ATTORNEY GENERAL OF NEW JERSEY and NEW JERSEY CASINO CONTROL COMMISSION,
*Appellees.*

**On Appeal from the Supreme Court of New Jersey**

## MOTION TO DISMISS

ROBERT J. GENATT, General Counsel*
JOHN R. ZIMMERMAN, Sr. Asst. Counsel
CASINO CONTROL COMMISSION
Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625
(609) 292-7584

*Counsel for Appellee, New Jersey Casino Control Commission*

* *Counsel of Record*

Adams Press Corp., 50 Park Place, Newark, New Jersey 07102—(201) 623-8611

## Questions Presented

1. Have appellants Clifford and Stuart Perlman been deprived of any Constitutionally protected rights where appellee New Jersey Casino Control Commission has found them unsuitable to participate in the strictly regulated New Jersey casino industry because (1) they have engaged in direct, intensive and continuing business associations with persons who have committed illegal acts and are reputedly involved in organized crime, (2) they have demonstrated contempt for the regulatory process, and (3) they have acted deceptively in conducting their corporate affairs?

2. Is the requirement of the New Jersey Casino Control Act that those who seek to participate in casino gambling must demonstrate their "good character, honesty and integrity" unconstitutionally vague because the New Jersey courts, in discussing the requirement, have referred to the need for such persons to be "sensitive" to the potential impact of their conduct on the industry, those who regulate it, those who patronize it and the general public?

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| QUESTIONS PRESENTED | i |
| TABLE OF AUTHORITIES | iii |
| STATEMENT OF THE CASE | 1 |
| SUMMARY OF ARGUMENT | 10 |
| ARGUMENT: | |
| *Point I*—The Commission's disqualification of the Perlmans is well founded in the evidence and in no way deprives them of rights guaranteed by the Constitution | 11 |
| *Point II*—The "good character, honesty and integrity" standard, as applied in this case, is not unconstitutionally vague | 16 |
| *Point III*—The Casino Control Commission's action, as upheld by the New Jersey courts, imposes no hardship on the Perlmans and was necessary to protect the integrity of the Atlantic City casino industry | 18 |
| CONCLUSION | 21 |

PAGE

## Table of Authorities

### Cases Cited

Bates v. City of Little Rock, 361 U.S. 516 (1960) .... 13

Boardwalk Regency Casino License Application, In re, 180 N. J. Super. 324 (App. Div. 1981) ..... 3

Boardwalk Regency Casino License Application, In re, 90 N. J. 361 (1982) ..... 4

Broadrick v. Oklahoma, 413 U.S. 601 (1973) ..... 18

Jacobson v. Hannifin, 627 F. 2d 177 (9 Cir. 1980) ..... 13

Konigsberg v. State Bar, 353 U.S. 252 (1957) ....12, 13, 16

Lewitus v. Colwell, 479 F. Supp. 439 (D. Md. 1979) 13

Medina v. Rudman, 545 F. 2d 244 (1 Cir. 1976) cert. den. 434 U.S. 891 (1977) ..... 13

Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) .....12, 13

State v. Rosenthal, 559 P. 2d 830 (Nev. Sup. Ct. 1977) ..... 13

State of Nevada v. Glusman, Nos. 12946 and 13217 (Nev., September 30, 1982) ..... 13

### United States Constitution Cited

Fourteenth Amendment, Section 1 ..... 11

### Statutes Cited

N.J.S.A. 5:12-1 *et seq.* ..... 2

N.J.S.A. 5:12-89(b)(2) ..... 2

NO. 82-691

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

---

CLIFFORD PERLMAN and STUART PERLMAN,

*Appellants,*

*v.*

ATTORNEY GENERAL OF NEW JERSEY and NEW JERSEY CASINO CONTROL COMMISSION,

*Appellees.*

---

**On Appeal from the Supreme Court of New Jersey**

---

## MOTION TO DISMISS

Appellee, the New Jersey Casino Control Commission, respectfully moves the Court to dismiss the instant appeal on the ground that the asserted federal questions raised by Appellants are manifestly insubstantial.

### Statement of the Case

**1. Proceedings below.**

In September 1978 Boardwalk Regency Corporation (BRC) applied to appellee Casino Control Commission

(Commission) for a casino license. BRC is wholly-owned subsidiary of Caesars New Jersey, Inc. (CNJ), which in turn is an 85% owned subsidiary of Caesars World, Inc. (CWI). Appellants Clifford and Stuart Perlman are the founders of CWI and the prime movers behind its growth and development into a major corporation. At the time of BRC's casino license application Clifford Perlman was board chairman and chief executive officer of CWI and CNJ, the largest CWI shareholder and a major CNJ shareholder (A42-43)[1]; and Stuart Perlman was vice-chairman of the boards of CWI and CNJ, the second largest CWI shareholder and a major CNJ shareholder (A59).

Under the New Jersey Casino Control Act (Act), N.J. Stat.Ann . 5:12-1 *et seq.*, BRC had the burden of establishing by clear and convincing evidence its qualifications for licensure, as well as the qualifications of various individuals who held prominent positions within BRC, CNJ and CWI (A40). Of course, Clifford and Stuart Perlman were among those individuals.

The qualification criteria applicable to BRC and the individual "qualifiers" include the demonstration of their "good character, honesty and integrity." N.J. Stat. Ann. 5:12-89 (b)(2) (A6; A26-29). Following a 23 day hearing the Commission issued an opinion (A35-A108) in which it found that BRC met all the requirements for licensure except that it had failed to demonstrate the good character, honesty and integrity of Clifford and Stuart Perlman (A59; A60-61). The Commission therefore issued an order (A109-112) which essentially required BRC to choose between (1) withdrawing from the casino industry in Atlantic City or (2) removing the Perlmans from any ownership or em-

---

[1] A refers to the appendix to the jurisdictional statement of appellants Perlman.

ployment connection with BRC, CNJ, CWI and any other CWI subsidiaries in any jurisdiction (A2).

BRC, CNJ, CWI and the Perlmans appealed the Commission's order to the Appellate Division of the New Jersey Superior Court (A14). The New Jersey Supreme Court stayed the operation of the Commission's order pending disposition of the appeals (A2).

The Appellate Division conducted an "extraordinarily careful review of the record" and concluded that it contained sufficient credible evidence to support the Commission's finding that BRC had failed to demonstrate the Perlmans' good character, honesty and integrity (A22). The Court also rejected a variety of constitutional attacks on the "good character, honesty and integrity" criterion as applied by the Commission (A22-34). *In re Boardwalk Regency Casino License Application*, 180 N.J. Super. 324 (App. Div. 1981).

The Appellate Division affirmed the Commission's order, with the single modification that the Perlmans would be permitted to hold positions in CWI's non-New Jersey subsidiaries which do not engage in gaming activities (A33-34).

BRC, CNJ, CWI and the Perlmans appealed to the New Jersey Supreme Court. The Commission and the New Jersey Attorney General filed petitions for certification, seeking to challenge the Appellate Division's modification of the Commission's order, and the petitions were granted.

Before the case was decided by the Supreme Court the Perlmans entered into an agreement to sell their CWI and CNJ stock to CWI, and to resign from all positions with CWI and CNJ, except that Clifford Perlman would continue as board chairman and chief executive officer of Desert Palace, Inc., a CWI subsidiary which operates

its Nevada casino hotels (A4). In its opinion, *In re Boardwalk Regency Casino License Application*, 90 N.J. 361 (1982), the State Supreme Court concluded that the case was not moot, due to Clifford Perlman's continuing position with Desert Palace, Inc., and the possibility of future involvement of Stuart Perlman with CWI or its subsidiaries (A4-A5).

On the merits of the controvery, the State Supreme Court affirmed, substantially for the reasons stated by the Appellate Division, that Court's rulings that the Commission's findings with respect to the Perlmans were supported by the record and that the statute as applied was not Constitutionally infirm.

The Supreme Court reversed the Appellate Division insofar as it had modified the Commission's order, and reinstated the order as issued by the Commission. The Court noted that the Commission's goal was to prevent the Perlmans from exercising influence or control over the operation of BRC's Atlantic City casino, and ruled that, in view of the enormous power and influence the Perlmans had always exercised throughout CWI, the Commission had acted reasonably and within the confines of due process in requiring as a condition of BRC's licensure that the Perlmans be removed from all positions within CWI and its subsidiaries.

**2. Factual basis for the finding that Clifford Perlman is not qualified.**

A variety of friends, business and banking associates and subordinates presented opinion testimony to the Commission in support of the Perlmans' claimed "good character, honesty and integrity." The Commission's contrary finding was based on specific instances of conduct.

These instances are discussed at length in the Commission's opinion (A44-56) and more briefly in the opinion of the Appellate Division (A18-23). A full discussion of these matters is neither possible nor necessary in this brief. However, a cursory discussion of the factual basis of the Commission's action is appropriate.

Lum's, Inc., the corporate predecessor to CWI, entered into the gaming business in 1969 by purchasing Caesars Palace in Las Vegas. Between the time the purchase agreement was signed and the time the sale was consummated the prior owners continued to run the casino, with the profits inuring to CWI. During this period Caesars Palace lost over $900,000, whereas it had shown a profit of over $2,200,000 during the same period a year earlier. Clifford Perlman accepted the explanation of Jerome Zarowitz, the director of casino operations, that the loss was attributable to the fortunes of gaming. Although Perlman knew that Zarowitz had a criminal record and reportedly had organized crime connections, and also knew that Zarowitz's suitability had been questioned by the Nevada gaming authorities, he made no inquiry about or investigation of the losses. In fact, Zarowitz was retained in his position after the sale was completed, and when he later resigned he was allowed to name his successor.

The FBI subsequently executed a search warrant at Caesars Palace and found $1,100,000 in a lockbox belonging to Zarowitz and $135,000 in a lockbox belonging to his successor. Clifford Perlman made no inquiry of either man about these funds. When the Securities and Exchange Commission attempted to investigate "skimming" at the Caesars Palace casino during the acquisition period, various employees refused to testify, and Clifford Perlman, who had by then taken personal charge of Caesars Palace, made no attempt to interview any of these em-

ployees. When one of these employees was later indicted, along with Samuel Cohen and reputed organized crime chieftain Meyer Lansky, in connection with skimming at the neighboring Flamingo casino, Clifford Perlman again made no inquiry, and in fact intervened on behalf of the indicted employee with the Nevada gaming authorities. The SEC ultimately instituted a lawsuit, which was settled in 1974 when Caesars Palace's former owners agreed to pay $1,100,000 to the CWI shareholders.

While the Flamingo skimming indictment was pending CWI entered into a $23,000,000 real estate purchase from a company controlled by Samuel Cohen and Alvin Malnik. During the CWI board meeting at which the transaction was approved, the board was told that Malnik was an alleged associate of Meyer Lansky, that he was believed by federal authorities to be involved in organized crime, and that he had been indicted for tax fraud and acquitted. The board was also advised that Cohen had been convicted of violating the Commodities Exchange Act, but the Perlmans did not advise the other board members of Cohen's pending indictment along wtih Meyer Lansky arising out of the alleged skimming at the Flamingo. None of the "outside" directors of CWI were aware of Cohen's indictment and two of those directors testified before the Commission that the indictment was a matter of major significance which should have been disclosed to them. In addition, CWI's attorney, David Bernstein, recommended that the company seek justice department approval before consummating a deal with Malnik and Cohen, but his suggestion was rejected. Mr. Bernstein's concerns continued, but he was eventually dissuaded by Clifford Perlman from again raising the matter before the board. Mr. Bernstein wrote a memorandum to his law firm about this matter, in which he said that Clifford Perlman was unquestionably "aware of the risks [he was] running."

The real estate transaction, as originally structured, involved the issuance of CWI stock warrants to Cohen and Malnik, but the warrants were eliminated when CWI learned that their issuance would require Cohen and Malnik to attempt to be licensed by the Nevada gaming authorities. The transaction was executed in October 1971, but was reinterpreted and revised on several occasions, primarily to protect Malnik and Cohen from adverse tax consequences.

In the summer of 1972 Clifford Perlman became personally involved with Alvin Malnik and Samuel Cohen's sons in the construction of a high-rise condominium complex known as the Cricket Club. The general contractor chosen by Malnik for the project had previously been convicted, along with Teamsters Union President Jimmy Hoffa, of fraud and conspiracy in using $1,000,000 in Teamster pension funds to finance a real estate venture. Clifford Perlman was aware of the conviction, and, although he had the right to object to the selection, he did not.

In October 1972 Nevada gaming officials warned CWI officials against continued involvement with Malnik. In November 1972 Clifford Perlman was approached by the Chairman of the Nevada Gaming Control Board, who expressed his concern about Perlman's association with a person of Malnik's reputation. Perlman made a commitment to extricate himself from the condominium project if Malnik would not institute a libel suit against the author of the book *Lansky*. However, Perlman remained involved in the venture after Malnik informed him that he would not file a libel suit. Within six months after Malnik's decision not to institute suit Clifford Perlman loaned $350,000 to the condominium venture, and did not tell the Nevada authorities. Perlman later told the SEC that he "definitely" breached his commitment to the Chairman of the Nevada Gaming Control Board.

According to Clifford Perlman's testimony before the Commission, he had a chance encounter with Malnik on an airplane in December 1974, and Malnik inquired whether Perlman or his company could provide an opportunity to invest a substantial sum of money. Perlman suggested a sale and leaseback of CWI's two honeymoon resorts in the Poconos. Malnik made a proposal as to the purchase price and the amount of the rental. There were no negotiations. Perlman simply presented Malnik's offer to the CWI board. He did not advise the board of his conversation with the Chairman of the Nevada Gaming Control Board concerning previous entanglements with Malnik. The CWI board approved the proposal, and CWI entered into a sale and leaseback arrangement with Malnik and Samuel Cohen's sons.

In December 1975 the Chairman of the Nevada Gaming Control Board and the Nevada Gaming Commission held a "closed and private" meeting with Clifford Perlman. These officials expressed their concern that Malnik was an instrument of organized crime and a person who should not be involved in Nevada gaming, and criticized Perlman for his failure to abide by his earlier commitment and for his and CWI's continuing involvement with Malnik. However, neither Perlman nor CWI took any action to extricate themselves from that involvement.

The factual outline above is necessarily sketchy, and cannot give the full flavor of the transactions involved. However, it should give some idea why the Commission concluded that it was "unable to declare that Clifford Perlman may be trusted to control a company which seeks licensure to operate a casino in this jurisdiction" (A56).

In reaching this conclusion the Commission found, based on the record before it, that Cohen and Malnik are persons of unsuitable character and reputation; that Clifford Perl-

man knew of the background and reputation of Cohen and Malnik, but nonetheless became personally involved with them and "led his company into a direct, intense, long lasting association" with them; that Clifford Perlman failed to provide the CWI directors with material information about Cohen and Malnik and offered no explanation for this failure; and that CWI's entanglements with and deep indebtedness to Cohen and Malnik were such that "Mr. Perlman in a very real sense delivered his company into the hands of Mr. Malnik, Samuel Cohen and Mr. Cohen's sons" (A57).

**3. Factual basis for the finding that Stuart Perlman is not qualified.**

Stuart Perlman voted in favor of the $23,000,000 real estate purchase with full knowledge of the pending indictment against Samuel Cohen, Meyer Lansky, and others, with full knowledge of the questionable reputations of Cohen and Alvin Malnik, without discussing the Cohen indictment, with CWI's outside directors, and against the advice of CWI's counsel. He voted in favor of the sale and leaseback of the Pocono properties without advising the CWI board of his brother's conversation with the Chairman of the Nevada Gaming Control Board.

Even though he was not an investor in the Cricket Club, Stuart Perlman was aware of the admonition by the Chairman of the Nevada Gaming Control Board about involvement with Alvin Malnik. Yet, he took no steps to inform the CWI Board of Directors or the Nevada regulatory authorities of his brother's deepening entanglement with Malnik. Additionally, the Perlman brothers considered themselves partners and, by 1976 Stuart was controlling his brother's financial accounts. Indeed, in

that year Stuart Perlman issued a check in his brother's name to the Cricket Club for $75,000. Thus, the Cricket Club venture raised serious questions about the suitability of Stuart Perlman.

In addition, the Commission found that Stuart and Clifford Perlman, are "more than just brothers," and that "there is a substantial commonality of economic interest as well as a close blood relationship between the two men" (A60).

The Commission concluded that BRC had failed to demonstrate the good character, honesty and integrity of Stuart or Clifford Perlman.

## Summary of Argument

The Perlmans were found unqualified to participate in the Atlantic City casino industry in part because of their deep and continuing involvement with persons of unsuitable character and reputation, most notably Alvin Malnik and Samuel Cohen. Malnik is and was reputed to be an agent for various organized crime figures. In addition, Cohen had violated the Commodities Exchange Act and was ultimately convicted, as a result of the Flamingo skimming indictment, of filing a false income tax return. The Perlmans' involvement was so deep as to subject them and their company to the potential influence or control of Malnik and Cohen. In fact, at one point CWI asked for and received a relaxation of its obligations to Malnik and Cohen. In addition, the Perlmans led CWI into the involvement with Malnik and Cohen while withholding material information concerning them from the other CWI directors. Furthermore, the Perlmans demonstrated contempt for the regulatory process. The presence of the Perlmans in prominent positions in the Atlantic City

gaming industry was thus deemed by the Commission to be intolerable, and the Commission could not license BRC as long as the Perlmans were connected with it or its holding companies.

The Commission's disqualification of the Perlmans was thus a reasonable and necessary regulatory action, and was not in any sense a deprivation of the Perlmans' constitutional rights. This is a case which turns on its particular facts and the application of those facts to a perfectly valid and well established standard, good character. It is hardly a case of constitutional significance, or of substantial import warranting this Court's attention.

## *ARGUMENT*

### POINT I

**The Commission's disqualification of the Perlmans is well founded in the evidence and in no way deprives them of rights guaranteed by the constitution.**

In Point One of their jurisdictional statement the Perlmans allege that the New Jersey courts erred in ruling that "normal constitutional guarantees," by which the Perlmans apparently mean the Fourteenth Amendment right to substantive due process, do not apply to those who seek approval to participate in the casino gaming industry in Atlantic City. In Point Two the Perlmans argue that the New Jersey courts erred in ruling that they can be barred from engaging in their chosen occupation based on unknowing and innocent associations. The two arguments are essentially the same, and may be considered together. In framing both the Perlmans have misstated the rulings of the Commission and the

courts and, in any event, have failed to raise any substantial Constitutional question.

The fallacy of the Perlman's position is clearly revealed by examining the cases on which they place primary reliance, *Schware* v. *Board of Bar Examiners,* 353 U.S. 232 (1957) and *Konigsberg* v. *State Bar,* 353 U.S. 252 (1957). Both cases involved persons who were denied admittance to the bar because State authorities found them to lack "good moral character," based, in part, on their prior membership in the Communist Party. 353 U.S. at 234-235; 253. In both cases the Supreme Court reversed, holding that a state can set high standards, such as good moral character, for bar admittance, but that membership in the Communist Party, during a time when that was a lawful and recognized political party, did not provide a factual basis for a finding of a lack of good moral character. *Id.* at 246; 273. In *Schware* the Court said:

> A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment. (At 238-239).

In *Konigsberg* the Court said that a state may not exercise it power to select members of its bar "in an arbitrary or discriminatory manner or in such way as to impinge on the freedom of political expression or association." *Id.* at 273.

Distinctions between *Schware* and *Konigsberg* and the present case are legion. First, the federal courts have specifically held that the privilege of participating in casino gambling is not a "fundamental" or "natural" right, such as the right to earn a living or engage in one's chosen occupation, which warrants constitutional protec-

tion apart from its status under state law. *See Jacobson* v. *Hannifin,* 627 F. 2d 177, 180 (9 Cir. 1980), and *Medina* v. *Rudman,* 545 F. 2d 244, 249-250 (1 Cir. 1976) *cert. den.* 434 U.S. 891 (1977), in which the Circuit Court specifically distinguished *Schware.* Likewise, the Nevada Supreme Court has held that gaming is a privilege conferred by individual states, and is not deserving of the Constitutional protections given to the so-called useful occupations. *State* v. *Rosenthal,* 559 P. 2d 830, 835-36 (Nev. Sup. Ct. 1977). Thus the Perlmans have no rights to participation in casino gaming arising from the Fourteenth Amendment, aside from those rights conferred upon them by the Casino Control Act. If the Commission acted within the authority of the Act in finding the Perlmans disqualified, then no substantive due process claims under federal law are available to them.

Second, it is clear that the Commission has not barred the Perlmans from engaging in any occupation. It has merely ruled that they are not qualified to participate in the ownership and operation of an entity which conducts a casino hotel operation in Atlantic City.

Third, *Schware* and *Konigsberg* involved the protected associational right to participate in a legitimate political party. There is no constitutionally protected right to engage in purely business associations. *Lewitus* v. *Colwell,* 479 F. Supp. 439, 444 (D. Md. 1979); *see also Bates* v. *City of Little Rock,* 361 U.S. 516, 522-523 (1960), *State of Nevada* v. *Glusman,* Nos. 12946 and 13217 (Nev., September 30, 1982).

Finally, in both *Schware* and *Konigsberg* the ultimate ruling was that there was no evidence which "rationally justifie[d]" the finding of a lack of good moral character. 353 U.S. at 246-247; 273. In the present case, as the New Jersey courts have held, and as should be clear even

from the superficial description of the factual record contained in this brief, there was ample evidence to support the Commission's conclusion that the Perlmans failed to demonstrate their good character, honesty and integrity by clear and convincing evidence.

With respect to both Clifford (A56-57) and Stuart (A60) Perlman, the Commission based its decision on three primary considerations: (1) their associations with Alvin Malnik and Samuel Cohen, which had progressed to the point that these unsuitable persons were in a position to exercise economic leverage over the CWI corporate family; (2) their contempt for the regulatory process; and (3) their irresponsibility and lack of candor in dealing with the other CWI directors. All of these factors are obviously relevant to the Commission's inquiry with respect to the suitability of the Perlmans to participate in New Jersey's casino industry, and the Commission's concerns with respect to each of these factors is well grounded in the evidence.

Nonetheless, the Perlmans attempt to construct a constitutional argument by seizing on the Appellate Division's use of the word "insensitive." The Perlmans appear to argue that the New Jersey courts have made "insensitivity," rather than good character, honesty and integrity, the standard of qualification, and in so doing have somehow endorsed "guilt by association." Neither the courts nor the Commission has done anything of the sort.

The statutory standard is and has always been good character, honesty and integrity. The Appellate Division merely used the word "insensitivity" in the course of rejecting the argument that the Perlmans had been found disqualified solely on the basis of "unknowing or otherwise innocent association" (A24). The Commission never

found that the Perlmans' associations with Malnik, Cohen, *et al.*, were "unknowing or otherwise innocent," nor did the Appellate Division make any such finding. Rather, the Appellate Division assumed for purposes of responding to the argument presented that such was the case, and stated:

> "Nonetheless, it is apparent from the clear findings of the Commission that it was obviously disturbed by such things as the then and later apparent insensitivity of the brothers to the potential impact of those associations upon the industry, those who regulate it, those who manage it, those who patronize it and the general public. This sensitivity on the part of the Commission respecting the insensitivity on the part of the Perlmans resides safely within the four corners of the statute where strict regulation is expressly mandated. (A24).

The Appellate Divison's point, as it explained later in its opinion (A32-33), was that the Perlmans had engaged in conduct potentially detrimental to the casino gaming industry, and that the Commission could properly consider this fact in making its good character determination. Of course, this was only one of many components of that determination. However, to the extent that it was a factor, it was a legitimate one. The primary objective of the Casino Control Act and the Commission is to protect the integrity of Atlantic City's incipient casino industry, and to foster public trust and confidence in that industry. Certainly the Perlmans were aware of the traditional ties between casino gaming and the underworld, and of the need to steer clear of entanglements with persons such as Malnik and Cohen. Nothing in the Constitution prohibits the Commission from considering their failure to do so. Nor does the Constitution

compel the Commission to close its eyes to the fact that such failure evidences, among other things, "insensitivity" to or disregard for the special nature of the casino industry and the need to foster public trust and confidence in the integrity of the industry and the regulatory process.

The Perlmans argue that "insensitivity" is a standard which is subject to abuse. As noted above, "insensitivity" is not the standard. In addition, any standard, including, as the Court noted in *Konigsberg*, 353 U. S. at 263, "good moral character," is subject to abuse. The fact is that there was no abuse here. The Commission's determination is supported by the record, and the Appellate Division's use of the word "insensitivity" cannot be used to transform what is essentially a sufficiency of the evidence case into one of Constitutional dimension.

## POINT II

**The "good character, honest and integrity" standard, as applied in this case, is not unconstitutionally vague.**

The third issue framed in the jurisdictional statement is whether the New Jersey courts have equated the "good character, honesty and integrity" standard with "insensitivity" and in so doing have rendered the standard unconstitutionally vague. First, it should by this point be clear that the State courts have not raised "insensitivity" to a statutory standard of disqualification. The Appellate Division merely referred to the Perlmans' "insensitivity" to the special nature of the casino industry and of the strict regulatory process under which it operates as a means of explicating the Commission's decision. Here again, the Perlmans attempt to fashion a constitutional argument out of a single word from the Appellate Division's opinion,

and they ignore the context in which the word was used and the extensive factual and conceptual underpinnings for the Commission's action as contained in the opinions of the Appellate Division and the Commission itself.

In addition, the word "insensitivity," as used by the Appellate Division, is not at all vague. The checkered history of casino gaming, and the need to impose the strictest possible regulation in order to prevent a repetition of that history, do not require documentation. Intensive state regulation is necessary to protect the casino industry against infiltration by organized crime and other unsuitable elements of society, and also to guard against the fact of impropriety or the appearance of impropriety on the part of those who own and operate casinos. All of this should be obvious to anyone, and certainly persons with the experience and sophistication of the Perlmans should be "sensitive" to it. In addition, Clifford Perlman had the benefit of specific and repeated admonitions by the Nevada gaming authorities to cease dealings with Alvin Malnik. The brothers Perlman were thus contemporaneously aware that Nevada was "sensitive" to their associations. Indeed, CWI's own lawyer noted at the time of the transactions that Clifford Perlman was unquestionably "aware of the risks [he was] running." Having ignored the warnings and accepted the risks, and having continued their dealings with Malnik and Cohen, and entered into additional entanglements with them, the Perlmans cannot seriously claim that they were unaware that these matters would be of concern to the New Jersey gaming authorities.

As the Perlmans note (J10),[2] the dangers of vague laws are that people will be left uncertain as to the conduct proscribed and decision makers will be left free to make

[2] J refers to the Perlmans' jurisdictional statement.

arbitrary rulings. The "good character, honesty and integrity" standard in the Casino Control Act is not vague. As that standard was applied here, the Perlmans were well aware of the possible consequences of their actions and ruling on their qualifications was clearly not arbitrary. In addition, it seems doubtful that the notion of vagueness applies here at all, in view of the fact that this case concerns a civil statute which does not proscribe any conduct, but merely requires a showing of good character, and the fact that the statute did not exist at the time of the Perlmans' dealings with Malnik, Cohen, *et al.* This is not a case involving protected First Amendment activities, and therefore the Perlmans should not be heard to argue that the statute is vague with respect to third persons not parties to this appeal. *Broadrick* v. *Oklahoma,* 413 U.S. 601, 610-11 (1973).

## POINT III

**The Casino Control Commission's action, as upheld by the New Jersey courts, imposes no hardship on the Perlmans and was necessary to protect the integrity of the Atlantic City casino industry.**

In Point Four of the jurisdictional statement the Perlmans argue that the holding below will have a serious impact on them and on the public. As to the Perlmans, it is true that they have been precluded from holding any position within the CWI corporate family so long as it continues to own and operate a casino in Atlantic City. The Commission does not deny that this is a serious consequence, but it was imposed only after BRC was afforded a full opportunity to establish the Perlmans' qualifications and after the Commission found, based on the record before it, that it had failed to do so. When BRC, CNJ and

CWI decided to disassociate themselves from the Perlmans, the Perlmans agreed to sell their CNJ and CWI stock to CWI, in exchange for which CWI agreed to pay the Perlmans approximately $96,000,000, representing roughly twice the market value of the stock. In addition, the Perlmans remain free to participate in BRC, CNJ or CWI, should those companies ever choose to withdraw from the Atlantic City casino industry. Failing that, if the Perlmans wish to remain in the casino business, there are many other companies involved in that business in Nevada and elsewhere.

Thus the consequences of the Commission's disqualification are serious, but hardly tragic to the Perlmans. A real tragedy would result, on the other hand, if this Court were to declare that, despite the Commission's findings, the Perlmans have a constitutional right to participate in New Jersey's gaming industry, and were thus to strip the Commission of its authority to safeguard the integrity of that industry.

The argument that the holding below will have a serious impact on the public is frivolous. The Perlmans appear to fear that the holding of the New Jersey courts in this case will usher in a new era of McCarthyism (J8), and will result in government agencies of all kinds "suspending" the Constitution, establishing "guilt by association," and excluding persons from occupations without giving fair warning of the conduct deemed sufficient to justify exclusion (J-12-13).

On the contrary, the privilege of participation in legalized casino gaming is logically and constitutionally extraordinary, (*see* Point II *supra*) and the holding in this case is not applicable to government agencies in general.

That fact aside, the Perlmans have not been subjected to guilt by association. They were not found guilty of anything. They were merely excluded from involvement in BRC and its holding companies because of their intensive and long lasting entanglements with Malnik, Cohen *et al.* In view of the history of casino gaming in other jurisdictions and the susceptibility of the casino industry to improper influence, and in view of the past deeds and the reputations of Malnik and Cohen, this exclusion was obviously reasonable and necessary to protect the fledgling casino industry in Atlantic City.

Nor were the Perlmans penalized without fair warning. They must have known that their entanglements with persons such as Malnik and Cohen would be of great concern to gaming authorities and had specifically been warned by the Nevada gaming officials to cease such entanglements. The Perlmans remaining contention, that the holding in this case would permit state governments to suspend the Constitution at will merely by labeling a particular area "sensitive" is simply nonsense. The special nature of casino gaming, the context in which the Appellate Division used the word "sensitive" in this case, and the solid factual and legal underpinnings of the Commission's action with regard to the Perlmans have all been discussed above, and should suffice to answer this final contention.

## CONCLUSION

**Appellee New Jersey Casino Control Commission respectfully submits that the appeal should be dismissed for want of a substantial federal question.**

Respectfully submitted,

NEW JERSEY CASINO CONTROL COMMISSION
By: ROBERT J. GENATT
General Counsel

JOHN R. ZIMMERMAN,
Senior Assistant Counsel,
*On the Brief.*

Dated: November 12, 1982